

## REMARKS

Applicants have carefully studied the outstanding Official Action. The present amendment is intended to be fully responsive to all points of rejection and is believed to place the application in condition for allowance. Favorable reconsideration and allowance of the present application are hereby respectfully requested.

Claims 75-78, 82-86, 95, 98-100, 103-106, 115, 116, 127-130, 150, and 156 were examined.

Claims 75-78, 82-86, 95, 98-100, 103-106, 115, 116, 127-130, 150, and 156 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Logan et al., (US2005/0005308) in view of Reisman (US2003/0229900).

The Examiner's rejections are respectfully traversed.

Applicants continue to traverse the Examiner's rejections, and maintain the arguments as presented in the pre-appeal brief filed on 2nd July 2009. Without in any way prejudicing the patentability of the rejected claims, Applicants have, in order to expedite the prosecution and for additional clarity, chosen to amend independent claims 75, 150 and 156 to include the limitation of "computing the selection time when the user pressed the key on the keypad and identify the selection based on the selection time when the user pressed the key on the keypad..".

The amendments to claims 75, 150 and 156 are supported by the PCT Published Patent Application on page 8 lines 17-20, page 27 lines 3-8 and 18-21, page 36 line 23 to page 37 line 2.

In overview, claim 150 is directed towards a Headend system for transmitting, to a target device, a **video and/or audio sequence** based on a selection of a streamed broadcast program made by a user.

The system of claim 150 is now described in more detail.

A streamed broadcast program is broadcast to a user for being rendered on a display.

While viewing the streamed broadcast program, the user selects a "selection" from the streamed broadcast program by **pressing a key on a keypad of a user selection unit.**

The selection is made by the user **at a selection time.**

An identifier unit is operative to:

compute the **selection time when the user pressed the key on the keypad;** and

identify the "selection" **based on the computed selection time when the user pressed the key on the keypad** with respect to rendering progress of the streamed broadcast program on the display.

In other words, the user selects a "selection" at a particular time. The identifier unit then identifies the "selection" which was selected by the user based on the time **when** the selection was selected by the user.

Therefore, the identification of the selection based on the selection time the user selected the selection is performed **after** the user selected the selection. This point is important to note so that claim 150 is not confused with other references, for example, paragraph 42 of Logan, et al.

The transmitting unit is operative to transmit a **video and/or audio sequence** based on the selection of the streamed broadcast program to at least one of an external device and an external medium.

**None of the references cited by the Examiner describe identifying a selection at a Headend based on when the selection was made by the user pressing the key on the keypad of the user-selection unit.**

The Official Action states that Logan inherently requires identifying the location of said play in the broadcast stream relative to the whole stream.

The rejection based on Logan is incorrect for the following reasons.

1. Logan in paragraph 41 describes segments having metadata for identification, e.g. short text labels. These short text labels identify the different segments in the segment index or guide (see para. 42 and Figs. 2 and 3). The user can select the different segments by scrolling the segments. Logan is silent on how the segments are actually selected. However, as the segments are displayed by their "label" and chosen by the user by their "label" it would be logical that the system selects the desired segment by the metadata short text label and not some timecode that is not mentioned in this context.

2. In Logan, since a user can choose from many different segments, which are generally related to different times, from the segment index (para 42), it would not make sense to say that the selection is identified based on a time stamp at which the selection was selected, as **the selection time of selection in Logan is irrelevant.** Therefore, Logan teaches away from identifying a selection by the time of selection.

3. Since it is most likely that selection of the desired segment is via the metadata short text label and Logan teaches away from identifying the selection via the time of selection, the rejection based on "Inherency" cited in the Official Action is improper. The Examiner is directed to MPEP 2112 "Requirements of Rejection Based on Inherency; Burden of Proof":

*"The fact that a certain result or characteristic may occur or be present in the prior art is not sufficient to establish the inherency of that result or characteristic. In re Rijckaert, 9 F.3d 1531, 1534, 28 USPQ2d 1955, 1957 (Fed. Cir. 1993) (reversed rejection because inherency was based on what would result due to optimization of conditions, not what was necessarily present in the prior art); In re Oelrich, 666 F.2d 578, 581-82, 212 USPQ 323, 326 (CCPA 1981). To establish inherency, the extrinsic evidence 'must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized*

*by persons of ordinary skill. Inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient.' " In re Robertson, 169 F.3d 743, 745, 49 USPQ2d 1949, 1950-51 (Fed. Cir. 1999) (citations omitted)"*

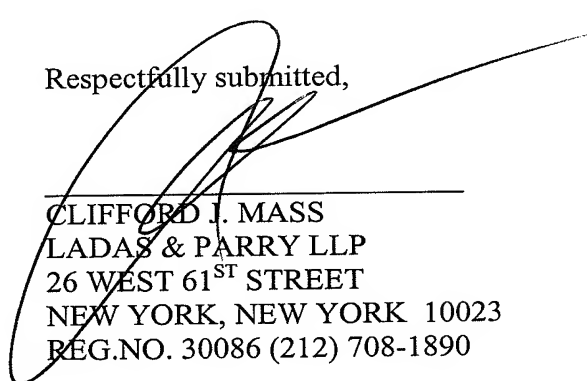
However, most importantly, Logan does not **identify a selection based on when the selection was made by the user.**

Similar arguments are also relevant to independent claims 75 and 156.

In view of the above remarks it is respectfully submitted that claims 75-78, 82-86, 95, 98-100, 103-106, 115, 116, 127-130, 150, and 156 are in condition for allowance. Prompt notice of allowance is respectfully and earnestly solicited.

Favorable consideration and allowance of the present application are hereby respectfully requested.

Respectfully submitted,



CLIFFORD J. MASS  
LADAS & PARRY LLP  
26 WEST 61<sup>ST</sup> STREET  
NEW YORK, NEW YORK 10023  
REG.NO. 30086 (212) 708-1890